

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

In re:

WILLIAM LEE HOLKA,

Debtor.

Case No. 04-23197

Chapter 13

Hon. Walter Shapero

**OPINION GRANTING DEBTOR'S
ATTORNEY FEE APPLICATION**

Debtor's attorneys in this Chapter 13 case have filed their application seeking approval of pre-confirmation attorney fees in the amount of \$3,876.50 in fees and \$30.21 in expenses. The Chapter 13 Trustee has objected essentially on the grounds that: (1) the rates charged by the various attorneys performing work on the file are excessive; and (2) the amount of time expended in connection with various items is excessive; and (3) taken as a whole, the amount sought exceeds what might be considered within the range of the "norm," or what is considered appropriate and reasonable, by the Chapter 13 Trustee at least, for cases of this kind before this Court. An evidentiary hearing was conducted including expert testimony offered by the applicant. During that hearing, applicant testified (and was cross-examined) as to the need and nature of, and for time spent on, the various items questioned by the Trustee, and as noted, introduced expert testimony to support the application. Applicant has a substantial number of fee applications pending which the Court has refrained from approving (but which it is now signing in a manner consistent herewith) on the theory that the outcome of this particular case might to some extent affect same, it being also clear at least to the Court that the parties either want or need some direction on the subject.

At the inception of their consumer practice, applicant, which maintains offices in Rochester Hills and Flint, in most cases charged a flat fee for representing debtors in Chapter 13 cases. That practice, if not the amount of which, was more or less consistent at least with respect to the local practices in the Flint and occasionally Bay City Bankruptcy Courts in which they practice. Their experience, however, pushed them toward charging their clients in such cases on an hourly basis and eschewing the flat fee concept. The case before the court is an hourly fee case.

As to the reasonableness of the various hourly rates attributed to the three attorneys involved, the preponderance of the evidence emanating from the applicant, a State Bar of Michigan study and the expert testimony, is that those rates, while possibly at the high end of the ranges for attorneys with comparable qualifications, experience, etc., are reasonable. As to the amount and necessity of the time spent as evidenced by the various time entries questioned by the Chapter 13 Trustee, the Court finds them to be reasonable also. Applicant's intra office system is that the initial intake and interviews are primarily conducted by the senior partner (who carries the highest hourly rate and the most experience) and the actual formulation of the schedules and the numbers, etc., is handled by a lower rated partner or partners. The argument is made that such a system necessarily involves unnecessary and non-compensable, duplication of effort primarily because of the time spent by the initial interviewing partner in sufficiently acquainting the follow-up partner with the case to enable him or her to complete the process. The credible testimony was that the time spent in those efforts was simply not charged for. Even if it was, an appropriate division of labor based on knowledge and expertise could very well accrue to the ultimate financial benefit of the client, depending upon the circumstances.

The more difficult issue in this case arises from the facts that applicant's offices are located in Flint and suburban Detroit where exist the bulk of its practice, and this case for applicant is a somewhat isolated Bay City case, which by reason thereof involves amounts of both travel and waiting time which are not capable of being divided up among a number of case files (as would be the case where the attorney has multiple matters scheduled for the same date), and when added together, produces charges that essentially approximate the difference between what the Trustee argues is a reasonable fee in this kind of case, and what applicant's full hourly charges for such time amount to.

In dealing with this case, it is important to understand that the economics of the Chapter 13 practice being what they are as a matter of practical necessity seem to demand there be some sort of guidelines, albeit informal ones, as to what are reasonable fees in such cases. As a result it has become customary around the country, and this District is no exception, for a Chapter 13 Trustee to indicate a specified level or range of fees with reference to which the Trustee will normally not take exception, ie., the so-called "no look" fee. Under that sort of system an attorney has a choice of either: (a) charging within the indicated "no look" range thus in effect saving himself or herself the time, trouble and risk of filing a fee application and pursuing it to hearing, etc., or (b) filing a fee application for some other amounts and having a hearing on same if it is objected to. The "no look" fee amount, in terms of its legal significance, is not much more than an element or relevant consideration (albeit a helpful one), among others, as to what is a reasonable fee is in the circumstances of an individual case under the mandate of § 330 of the Bankruptcy Code.

The applicable law in this Circuit is confirmatory of that and emanates from *Boddy v. United States Bankr. Court, W.D. Ky. (In re Boddy)*, 950 F.2d 334 (6th Cir. 1991), where the Court in a Chapter 13 case fee situation held that the application of a “normal and customary” standard to determine the attorney fee, rather than the lodestar or hourly method, was an abuse of the Bankruptcy Court’s discretion and inconsistent with the dictates of § 330. Furthermore, this Court also associates itself with the reasoning of his fellow judge in this District in the case of *In re Braddy*, 195 B.R. 365, 367-68 (Bankr. E.D. Mich. 1996), where the Court concluded that the compensation to which an attorney is entitled to in this District “includes compensation at the attorney’s full hourly rate for travel time that is: (1) actually spent for travel; (2) a reasonable time considering the distance traveled; (3) necessary in the sense that the travel was required in connection with the bankruptcy court process; and (4) beneficial in the sense that the legal services for which the travel was undertaken advanced the administration of the estate.” *Braddy*, 195 B.R. at 367-68. That same opinion also made conceptually clear that waiting time is in the same category as travel time. *Id.* at 368. The time involved in this case meets those requirements. The Court in that case did take some pains to differentiate that case from the situation where the debtor retained an attorney from outside the district to handle a case fully capable of being handled by an in-district attorney, or for “required out of town travel by a locally based professional.” *Id.* n.1. In this Court’s view, the applicable and appropriate marketplace for debtors’ attorneys filing cases in Flint or Bay City, for this purpose ought to be considered as attorneys having offices in or around any of those cities or the counties in the Eastern District providing the proper venue for those filed cases. As noted in *Braddy*, the Court’s conclusion has the effect of facilitating the competitive market for legal services and

affording greater opportunities for the public, who are and should be free to pick and choose their counsel and to decide for themselves whether the additional travel or waiting time which might be involved, and for which they will have to pay, is worth it to them. To be sure, there are factors that indicate the legal marketplace is not fully competitive in the purest of senses, but it appears to be sufficiently such as not to adopt some position that inordinately undercuts the important concept of appropriately honoring Debtors own choices of counsel and their informed agreements in a manner consistent with the Bankruptcy Code..

Accordingly, the amounts sought by applicant are approved and an appropriate Order will be entered.

WALTER SHAPERO
U.S. BANKRUPTCY JUDGE

Service list:

Darryl J. Chimko
Robert L. Dzialo
Daniela Dimovski
Attorneys at Law
P.O. Box 70368
Rochester, MI 48307-0368

Thomas W. McDonald, Jr.
Chapter 13 Trustee
P.O. Box 6310
Saginaw, MI 48608